

AUSTRALIAN CAPITAL TERRITORY

DRAFT MENTAL HEALTH ORDINANCE 1962

EXPLANATORY MEMORANDUM.

No. 5 of 1962

On 18th October, 1961 a Supplemental Agreement to extend the Agreement Scheduled to the Insane Persons and Inebriates (Committal and Detention) Ordinance 1936-1937 between the Commonwealth and the State of New South Wales was signed by the Minister for the Interior on behalf of the Commonwealth and by the Minister for Health of the State of New South Wales. The Supplemental Agreement has been made to enable persons who are committed by Courts in the Australian Capital Territory to institutions, to be received into New South Wales institutions and to be detained there according to current New South Wales practices adopted since the principal agreement in 1936.

The draft Mental Health Ordinance 1962 has been prepared for ratification and implementation of the Supplemental Agreement. The Insane Persons and Inebriates (Committal and Detention) Ordinance 1936-1937 provides for the removal of persons from the Territory to institutions in New South Wales but this provision is unsatisfactory in that only those persons certified as insane come under the arrangement with the State. There has been no alteration to this Ordinance since 1937 when its provisions were consistent with State provisions for committal of persons to institutions but a complete review of its provisions has been made by New South Wales and new provisions in that State are contained in the Mental Health Act 1958. The State's new provisions enable a person to be committed to an institution on a tentative basis pending Magisterial enquiry as to whether such a person should be detained in an institution.

There are no institutions in the Territory for the reception and detention of insane persons and existing arrangements with the State of New South Wales therefore have to be continued. For this reason a complete redraft of the law applicable to insane persons has not been attempted at this stage, and it has been considered that the quickest way to overcome the unsatisfactory features of the present agreement has been to settle a Supplemental Agreement and to draft a ratifying Ordinance.

The draft Ordinance provides that where each of two medical practitioners has, independently of the other, personally examined a person and formed the opinion that the person is mentally ill and is suitable for admission to an admission centre in the State, the person may be conveyed, forcibly if necessary, to such an admission centre. Where a person has been committed for trial for an offence against the law of the Territory and has not been tried by reason of the fact that he was not fit to plead and has been detained in an institution in the State, the Ordinance provides that the Minister may order the return to the Territory of the person for the

purpose of having that person's fitness to plead to the charge determined by the Supreme Court. The Ordinance also confers powers on the Master in regard to the property in the Territory of mental patients confined in the State.

The Supplemental Agreement which is ratified and approved by section 3 of the draft Ordinance provides that a willing person can be admitted to an Admission Centre on the certificate of one medical practitioner for observation and treatment whereas an involuntary patient may only be removed to an institution on the certificates of two medical practitioners. No Court hearing is involved but provision is made for a Magisterial inquiry to be held after admission of the person to determine whether or not he should be further detained. Provision is also made for a person to be admitted to a State institution on his own motion. Such a person may make application at any time for discharge from the institution.

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